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12 **UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

13 SAVE OUR FOREST ASSOCIATION,  
14 INC.,

15 Plaintiff,

16 v.

17 UNITED STATES FOREST SERVICE,  
*et al.*,

18 Federal Defendants.  
19  
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Case No. 5:24-cv-01336-JGB-DTB

**FEDERAL DEFENDANTS'  
RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION TO  
COMPLETE ADMINISTRATIVE  
RECORD**

Hearing Date: November 24, 2025

Hearing Time: 9:00 AM

Courtroom: Riverside Courtroom 1

Judge: Hon. Jesus G. Bernal

Action Filed: June 25, 2024

## **INTRODUCTION**

Plaintiff Save Our Forest Association (“SOFA”) challenges the Forest Service’s 2023 Special Use Permit (“SUP”) authorizing BlueTriton Brands, Inc. to occupy and use the San Bernardino National Forest for a water collection and transmission system. *See generally* ECF No. 24 (“Am. Compl.”). Federal Defendants lodged the Administrative Record for Plaintiff’s challenges on September 29, 2025. ECF No. 77. Plaintiff now challenges the completeness of that Administrative Record, asserting that the Administrative Record must include the entire Administrative Records for proceedings before the California State Water Resources Control Board (“SWRCB”), to which the Forest Service was not a party, and before this Court in a 2015 challenge that occurred before the decision-making process for the 2023 SUP challenged in this litigation began. Pl. Mot., ECF No. 81-1 at 2.

Plaintiff’s Motion to Complete the Administrative Record is misplaced. Plaintiff asks this Court to order the Forest Service to “complete” the Administrative Record for the decision-making processes at issue in this case with the entire record before the SWRCB as well as the entire administrative record lodged with the Court in *Ctr. for Biological Diversity v. U.S. Forest Serv.*, No. EDCV-15-2098-JGB (DTBx), 2016 WL 5334474 \*6-7 (C.D. Cal. Sept. 20, 2016) (hereinafter “Nestlé Waters case”). But Plaintiff fails to show, or even attempt to show, that the Forest Service did not include in the certified Administrative Record for this case any materials from these other records that the Forest Service considered in the decision-making processes for the 2023 SUP and its continued

1 implementation.

2 Plaintiff therefore has fallen far short of meeting its burden of producing  
3 “clear evidence” that the Forest Service improperly designated the Administrative  
4 Record here. *See, e.g., Goffney v. Becerra*, 995 F.3d 737, 748 (9th Cir. 2021). The  
5 Court should deny Plaintiff’s Motion to Complete the Administrative Record, ECF  
6 No. 81.

7 **LEGAL STANDARD**

8 In reviewing claims brought under the Administrative Procedure Act  
9 (“APA”), a court will uphold agency action unless the action is “arbitrary,  
10 capricious, an abuse of discretion, or otherwise not in accordance with law” as  
11 determined by review of “the whole record or those parts of it cited by a party.” 5  
12 U.S.C. § 706(2)(A). “[T]he function of the district court is to determine whether or  
13 not as a matter of law the evidence in the administrative record permitted the  
14 agency to make the decision it did.” *Occidental Eng’g Co. v. INS*, 753 F.2d 766,  
15 769 (9th Cir. 1985). Accordingly, “the focal point for judicial review should be the  
16 administrative record already in existence, not some new record made initially in  
17 the reviewing court.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *Friends of the*  
18 *Earth v. Hintz*, 800 F.2d 822, 829 (9th Cir. 1986). APA record-review principles  
19 apply both to claims to “compel agency action unlawfully withheld or  
20 unreasonably delayed” under § 706(1) and to claims challenging agency action  
21 under § 706(2). *All. for the Wild Rockies v. Probert*, 412 F. Supp. 3d 1188, 1197  
22 (D. Mont. 2019) (citing *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 560  
23 (9th Cir. 2000)). “When a reviewing court considers evidence that was not before  
24

1 the agency, it inevitably leads the reviewing court to [improperly] substitute its  
2 judgment for that of the agency.” *Asarco, Inc. v. U.S. Env’t Prot. Agency*, 616  
3 F.2d 1153, 1160 (9th Cir. 1980).

4 The administrative record consists of “all documents and materials directly  
5 or indirectly considered by agency decision-makers and includes evidence contrary  
6 to the agency’s position.” *Thompson v. U.S. Dep’t of Lab.*, 885 F.2d 551, 555 (9th  
7 Cir. 1989) (citation omitted). The record does not include “‘every scrap of paper  
8 that could or might have been created’ on a subject.” *Bay.org v. Zinke*, No. 1:17-  
9 cv-01176 LJO-EPG, 2018 WL 3965367, \*3 (E.D. Cal. Aug. 16, 2018) (citation  
10 omitted); *see also California v. Bureau of Land Mgmt.*, No. 18-cv-00521-HSG,  
11 2019 WL 1455335, at \*5 (N.D. Cal. Apr. 2, 2019) (not every document on the  
12 subject within the agency’s possession was necessarily considered for a decision).

13 There are two procedures through which materials may be added to an  
14 administrative record after it has been found inadequate. First, the record may be  
15 “completed” with materials that were considered by the agency but omitted from  
16 the administrative record. *Nw. Envt’l Advocs. v. U.S. Fish & Wildlife Serv.*, No.  
17 3:18-CV-01420-AC, 2019 WL 6977406, at \*5 (D. Or. Dec. 20, 2019). Second,  
18 under narrow circumstances, a record may be “supplemented” with materials that  
19 were not considered by the agency but which nonetheless fall into one of the  
20 narrow exceptions to the record review rule. *Id.* at \*6-7; *see also Audubon Soc’y of*  
21 *Portland v. Zinke*, No.1:17-cv-69-MC, 2017 WL 6376464, at \*3 (D. Or. Dec. 12,  
22 2017). Plaintiff seeks only to “complete” the Administrative Record here.

**ARGUMENT**

**I. THE ENTIRE RECORDS FROM THE SWRCB AND NESTLÉ WATERS PROCEEDINGS ARE NOT PROPERLY PART OF THE ADMINISTRATIVE RECORD FOR THE 2023 SUP**

Because, “like other official agency actions, an agency’s statement of what is in the [Administrative R]ecord is subject to a presumption of regularity,” the courts “must therefore presume that an ‘agency properly designated the Administrative Record absent clear evidence to the contrary.’” *Goffney v. Becerra*, 995 F.3d 737, 748 (9th Cir. 2021) (quoting *Bar MK Ranches v. Yuetter*, 994 F.2d 735, 740 (10th Cir. 1993)); *see also Cook Inletkeeper v. U.S. Env’t Prot. Agency*, 400 F. App’x 239, 240 (9th Cir. 2010) (same); *Ctr. for Biological Diversity v. U.S. Army Corps of Eng’rs*, No. CV 14-1667 PSG, 2015 WL 3606419, at \*2 (C.D. Cal. Feb. 4, 2015) (same). “The party seeking [to complete the Administrative Record] bears the burden of overcoming [the presumption of regularity] by ‘clear evidence.’” *Pinnacle Armor, Inc. v. United States*, 923 F. Supp. 2d 1226, 1232 (E.D. Cal. 2013).

“To overcome the presumption that public officers have properly discharged their duties and that the administrative record is therefore complete, a plaintiff must (1) ‘identify reasonable, non-speculative grounds for its belief that the documents were considered by the agency and not included in the record,’ and (2) ‘identify the materials allegedly omitted from the record with sufficient specificity, as opposed to merely proffering broad categories of documents . . . that are likely to exist.’” *Audubon Soc’y of Portland*, 2017 WL 6376464, at \*4 (emphasis added) (quoting *Pac. Shores Subdivision, Cal. Water Dist. v. U.S. Army Corps of Eng’rs*,

1 448 F. Supp. 2d 1, 6 (D.D.C. 2006); *California v. U.S. Dep't of Lab.*, No. 2:13-cv-  
2 02069-KJM-DAD, 2014 WL 1665290, at \*5 (E.D. Cal. Apr. 24, 2014)). As  
3 another court explained, “[t]o overcome the presumption of regularity and meet the  
4 burden of proving that the record designated by the agency is incomplete,  
5 Petitioners must clearly set forth in their motion: (1) when the documents were  
6 presented to the agency; (2) to whom; (3) and under what context,” and *then* “must  
7 also establish that these documents were directly or indirectly considered by the  
8 relevant agency decision makers.” *Ctr. for Native Ecosystems v. Salazar*, 711 F.  
9 Supp. 2d 1267, 1275 (D. Colo. 2010) (citations and footnote omitted).

10 Here, Federal Defendants lodged the Administrative Record on September  
11 29, 2025. ECF No. 77. In this lodging, the Forest Service certified that the  
12 Administrative Record included all of the materials that the agency considered in  
13 the decision-making processes leading to the operative 2023 SUP (e.g., the  
14 agency’s National Environmental Policy Act (“NEPA”) review) and its continued  
15 implementation challenged by Plaintiff in its First Amended Complaint: “To the  
16 best of my knowledge, information, and belief, the documents listed in the index of  
17 the Administrative Record and provided to the court and the Parties along with this  
18 certification constitute a true and correct copy of the Forest Service’s  
19 Administrative Record, including all documents directly or indirectly considered  
20 during the Forest’s NEPA review, or in the administration of BlueTriton’s permit  
21 following the Forest’s NEPA determination.” ECF No. 77-1 at 2 ¶ 3. The Forest  
22 Service’s designation of the completeness of the Administrative Record is thus  
23 entitled to a presumption of regularity.  
24

1 With regard to the SWRCB record, Plaintiff attempts to overcome this  
2 presumption of regularity only by asserting that “[t]hree [Forest Service]  
3 employees were included in service of every single document in the Water Board  
4 AR upon their request.” Pl. Mot., ECF No. 81-1 at 6. But nowhere does Plaintiff  
5 produce evidence that these employees ever *received* all of the SWRCB record  
6 documents, let alone that they incorporated the documents into the decision-  
7 making processes for the *Forest Service* decision at issue in this litigation. Even if  
8 Forest Service employees possessed some or all of these documents or they  
9 “pertain” to BlueTriton’s diversions of water, that would not establish that they  
10 were “before” the agency as part of the decision-making process challenged here.  
11 *See id.* at 7-8 (citing *Portland Audubon Soc’y v. Endangered Species Comm.*, 984  
12 F.2d 1534, 1548 (9th Cir. 1993)). On the contrary, the Ninth Circuit has equated  
13 *Portland Audubon*’s statement that the Administrative Record “includes everything  
14 that was before the agency pertaining to the merits of its decision,” 984 F.2d at  
15 1548, to its more common framing of the scope of the Administrative Record in  
16 *Thompson*, 885 F.2d at 555-56, as “consist[ing] of all documents and materials  
17 directly or indirectly considered by agency decision-makers.” *See Goffney*, 995  
18 F.3d at 747.

19 Thus, for materials to be properly included in the Forest Service’s  
20 Administrative Record, the Forest Service decisionmakers must actually have  
21 considered the documents in the decision-making process at issue in this litigation.  
22 It is not enough for some employee somewhere in the agency to have had a  
23 document in their possession.  
24

1 Plaintiff makes no attempt to show that the Forest Service considered each  
2 and every document that was part of the record for the SWRCB proceeding in the  
3 Forest Service's decision-making processes at issue here. Instead, Plaintiff  
4 concedes that the Forest Service advised Plaintiff that any documents from the  
5 SWRCB proceeding that the agency did consider in its decision-making process  
6 are already included in the certified Administrative Record. *See* Pl. Mot., ECF No.  
7 81-1 at 3. Plaintiff has fallen far short of meeting its burden of producing "clear  
8 evidence" that the Forest Service improperly designated the Administrative Record  
9 by not including materials from the SWRCB record that the Forest Service did not  
10 consider in its decision-making process here. Indeed, Plaintiff admits that it cannot  
11 meet this burden, conceding that it does not know whether the materials were  
12 considered by the Forest Service. *Id.* Plaintiff's motion to "complete" the  
13 Administrative Record with the entire SWRCB record must be rejected.

14 The same is true with regard to the administrative record for the 2015 Nestlé  
15 Waters litigation. In the Nestlé Waters case, the plaintiffs challenged the  
16 continued validity of a 1978 SUP issued to BlueTriton's predecessor for operation  
17 of the same Strawberry Canyon diversion and transportation infrastructure that  
18 BlueTriton operates pursuant to the 2023 SUP. The focus of that 2015 litigation  
19 and administrative record was whether the 1978 SUP continued in effect under the  
20 law based on Blue Triton's predecessor's 1987 request to renew that SUP, and this  
21 Court rejected the plaintiffs' claims under the APA, 5 U.S.C. § 558(c). *See Ctr. for*  
22 *Biological Diversity*, 2016 WL 5334474 at \*6-7.

23 As with the SWRCB record, Plaintiff makes no attempt whatsoever to  
24



1 establish that the Forest Service considered in the decision-making processes here  
2 any materials from the Nestlé Waters administrative record that are not already  
3 included in the Administrative Record that Federal Defendants certified and lodged  
4 with the Court. Instead, Plaintiff simply assert that materials in the Nestlé Waters  
5 administrative record “establish . . . the historical record of when water was first  
6 diverted by [BlueTriton’s] predecessor in interest pursuant to an SUP from the  
7 [Forest Service],” and therefore were “before” the Forest Service under *Portland*  
8 *Audubon*’s statement of the scope of the administrative record. Pl. Mot., ECF No.  
9 81-1 at 8. Again, however, Plaintiff must do more than assert that materials related  
10 to the subject matter of the challenged decision were in the agency’s possession.  
11 Plaintiff must show with “clear evidence” that the materials were actually  
12 considered by the agency in the challenged decision-making processes. *See*  
13 *Goffney*, 995 F.3d at 747-48.

14 Plaintiff has made no effort to meet this requirement with regard to any  
15 materials from the 2015 Nestlé Waters administrative record for agency actions  
16 from the 1980s and prior, let alone the *entire* Nestlé Waters administrative record.  
17 Therefore, its motion to complete the administrative record with the Nestlé Waters  
18 administrative record must be rejected as well.<sup>1</sup> The Ninth Circuit in *Blue*

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19 <sup>1</sup> Plaintiff also briefly asserts that attachments to its October 2023 letter to the  
20 Forest Service “should” be included in the Administrative Record because the  
21 Forest Service agreed to do so. Pl. Mot., ECF No. 81-1 at 9. Plaintiff was required  
22 to raise this issue after Federal Defendants produced the indexed *proposed*  
23 Administrative Record on August 8, 2025, but Plaintiff failed to do so, waiving the  
24 issue. *See* August 18, 2025 “Order on Stipulation for Proposed Briefing  
Schedule,” ECF No. 76, ¶¶ 1, 2, 6. Nonetheless, Federal Defendants agree to add  
any attachments to the October 2023 letter that are not already included in the

1 *Mountain Biodiversity Project v. Jeffries*, 99 F.4th 438, 445-46 (9th Cir. 2024),  
2 rejected an almost identical argument that “the documents in the [prior] 2016  
3 [Administrative Record] were necessarily before the agency in the 2020 [decision-  
4 making] process because the Project is a continuation of the withdrawn one,” with  
5 the Ninth Circuit crediting the Forest Service’s contention that it properly included  
6 in the Administrative Record “only documents from the previous NEPA analyses  
7 that were considered in the 2020 decision” at issue in the case. *See also City of*  
8 *Dania Beach v. FAA*, 628 F.3d 581, 590 (D.C. Cir. 2010) (rejecting similar request  
9 from plaintiffs seeking to supplement an “administrative record with hundreds of  
10 pages of documents introduced in prior [NEPA] processes that contemplated [a  
11 similar project]”). Plaintiff’s position that the current Administrative Record for  
12 the agency actions challenged here must also include the entire Nestlé Waters  
13 administrative record for previous agency actions is contrary to Ninth Circuit case  
14 law and must be rejected.

### 15 **CONCLUSION**

16 For the reasons set forth above, Plaintiff has failed to demonstrate that the  
17 Administrative Record lodged by Federal Defendants must include the entire  
18 records from the SWRCB and Nestlé Waters proceedings. On the contrary, the  
19 Forest Service has certified that the Administrative Record is complete, and that it  
20 already includes the materials that the Forest Service considered in the decision-  
21 making process for the 2023 SUP challenged in *this* case. Therefore, Federal

22  
23 Administrative Record, once this Court rules on the other issues raised in  
24 Plaintiff’s Motion.

1 Defendants respectfully request that the Court deny Plaintiff's Motion to Complete  
2 the Administrative Record, ECF No. 81.

3  
4 Respectfully submitted on November 3, 2025.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send email notification to the attorneys of record.

/s/ Emma L. Hamilton  
Emma L. Hamilton  
U.S. Department of Justice